

To: Delancey, George J LRL[George.J.Delancey@usace.army.mil]
From: Melgin, Wendy
Sent: Mon 8/25/2014 12:47:28 PM
Subject: RE: looking for a way to study the long term water quality impact of Peabody Energy slurry practices (UNCLASSIFIED)

Yep, I hear ya! It has been extremely frustrating these days. I'll talk to our 402 staff and see what they have to say. Thanks for checking.

From: Delancey, George J LRL <George.J.Delancey@usace.army.mil>
Sent: Friday, August 22, 2014 10:28 AM
To: Melgin, Wendy
Cc: Schaller, Andrea; Weaver, Kerryann; Arrigoni, Holly
Subject: RE: looking for a way to study the long term water quality impact of Peabody Energy slurry practices (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

You know this honestly is a bit, no wait, incredibly aggravating. No agency with the proper authority ever seems to tackle this issue head on even after some very public disasters with similar circumstances with power plant spills into public waters. Peabody had a failure up at Bear Run a couple years ago when Region V was digging in all over the 402 issues a Bear Run a few years ago, Peabody had a failure up at Bear Run a couple years ago and slurry and sediment ended up in downstream waters and a private impoundment. This one was on a silver platter, and NOTHING, was done with it except the Fed and State shuffling it back and forth on each other, the DNR telling the landowner to essentially get over it and that they didn't see anything on the testing. Wait, this is the same group that says it is ok to dump slurry into open water because it keeps the material in an anaerobic state. Right, that makes it safe.

As I understand it, slurry disposal lakes are 402 regulated and these lakes, if they have not be released form Phase 3, likely still have 402's on them. Hmm, the coal company hiding behind Gag orders and IBR's and PMLU changes. These landowners are beautiful. Give me a lease so I can get the coal money! Wait, I'm getting screwed here! Lay with snakes, expect to get bit once in awhile. And DNR is a do nothing agency due to leadership's (at least the previous two) obsession with keeping King Coal happy and they may as well have Friends of Coal tattooed on their !@#.

We have no application that I am aware of for the berm. I will look around to confirm, but I know we don't. If it is in non 404 waters we can't say much because they can hind behind SMCRA and 402. That area was permitted (404) years ago (late 90's) if I recall correctly. Unless they are putting that berm across waters that have not been impacted previously then we are likely useless as well. If you can get me a map with the berm location I will look for you.

-----Original Message-----

From: Melgin, Wendy [mailto:melgin.wendy@epa.gov]
Sent: Friday, August 22, 2014 9:55 AM
To: Delancey, George J LRL
Cc: Schaller, Andrea; Weaver, Kerryann; Arrigoni, Holly
Subject: [EXTERNAL] FW: looking for a way to study the long term water quality impact of Peabody Energy slurry practices

Hi George, have you been involved with this? Is there a 404 application for the berm?

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> From: Daniel Sparks <daniel_sparks@fws.gov>
> Sent: Thursday, August 21, 2014 1:25 PM
> To: Pellegrini, Janet; Schaller, Andrea; Bauer, Candice
> Subject: looking for a way to study the long term water quality impact of Peabody Energy slurry practices
>
> Greetings!
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> I know from past conversations that there is nothing that can be done, but I still thought you might find this interesting. Between the habitat losses, the changing of flood impacts, and the potential for gaining scientific insights into this practice (which might lead to future improved best management practices) perhaps this is worth a read. We are looking for internal resources to document these impacts although I don't know that we will find the resources.

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> Cheers, Dan
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> Daniel W. Sparks
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> From: McCoy, Bill [mailto:bill_mccoy@fws.gov<mailto:bill_mccoy@fws.gov>]
> Sent: Thursday, August 21, 2014 11:39 AM
> To: Daniel Sparks; Scott Pruitt
> Subject: Refuge Cleanup Projects

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> ?Hi Dan and Scott,
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> Peabody Energy is moving ahead with their plans to build a large earthen berm about 8-feet high to block the flood waters of the Patoka River? from inundating the 92-acre Flat Lake they are planning to convert into a slurry pit for coal wash plant waste. If there was ever a time to take a hard look at the impacts of coal slurry deposition to water quality , invertebrates, fish and wildlife, this is it. I spent an hour on the phone yesterday morning with a farmer that owns 40 acres that was leased and mined for surface coal years ago on the eastern edge of Flat Lake. Peabody never requested the Phase 3 bond release and now they are building the flood control dike across this field. The farmer told me that all the landowners that signed coal leases years ago have since found out that there was a "Gag Order" in the lease that prevents them from talking about coal company operations. One of the farmers was called and reminded of this by a Peabody attorney.

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> What has brought this recreation / slurry lake conversion project to a head is the fact that the previous 5-year mining permit identified all the lakes created during the surface mine reclamation , about 300-acres, as recreational lakes. None of the people complained about that. In Peabody's latest five-year permit renewal application this spring, they changed the lake designations to slurry pits. HEC requested a public hearing and it was held at the Oakland City library. The room was packed. Testimony was given by numerous people of which five were Friends of the Refuge. There were no favorable comments. I testified and submitted photographic evidence of past slurry pit violations by Triad Mining on the refuge Graulich Tract. Back at that time, I went to Jasonville with that evidence along with Jack Nawrot to request an explanation and seek a violation notice. The nine IDNR officials that met with us said it couldn't be helped due to drought. I showed pictures of the pit being inundated by Patoka River flood waters. They said it couldn't be helped due to extreme flooding conditions. I pointed out that those same conditions reoccur at least two years out of five at that location. I asked how they could permit that location when it was so

obvious that the slurry pit was connected to the Patoka River floodplain. That pit has an earthen levee to supposedly keep out river flood waters.

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> Peabody has already dumped slurry into two of the Francisco Mine lakes within the refuge acquisition area. They are now readying this 92-acre Flat Lake for slurry. There were 30 adult interior least terns that produced an estimated 15 fledglings along the southeast shoreline of this lake this year. As soon as the fledglings were up and flying last week, Peabody started their bulldozing of the flood control levee. This will be the third large levee being constructed to restrict the floodplain in that area of Wheeling bottoms. Farmers are now realizing their adjacent farmland will be impacted by increased levels of flood waters. Under the gag order, they cannot do much about it. The farmer that called me is an exception as he now realizes at least 40 acres of his farm land will be permanently impacted with the earthen levee. This land is located within the approved acquisition boundary of the Patoka River NWR and MA. That should have some significance especially as it relates to the protection of T & E species not to mention the thousands of waterfowl and many other species such as the pelican and shorebirds that utilize the lake at different times during the year. The significant value of this man-made lake to many species of fish and wildlife is obvious by the fact that so many have been attracted to these waters in the short time it has been in existence.

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> At the end of the Oakland City public meeting and later in the written response received from Jasonville IDNR, we were told that all the water quality reports collected from the slurry lake outfall pipes were in compliance. Therefore, the request to renew the 5-year mining permit was going to be approved. There was a second 5-year mining permit approved several months before for the underground Francisco Mine from which the current coal waste products are being produced. Why was there not a connection made between the two permits? The waste products of the underground mine are now being deposited on the surface mine which no longer operates since reclamation is complete except for the existence of the lakes being used as dump sites?

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> At the Gibson County Commissioner meeting on Tuesday evening, Peabody continued their pursuit of a change in their slurry deposition plans by requesting permission to relocate the west to east flowing drainage ditch on the north side of the Flat Lake. The ditch had originally been located in the center of where the lake is now located. Peabody got permission to relocate the ditch north of the lake years ago when they were strip mining. Now due to their new plans to build an earthen levee to keep out flood waters so they can use the lake as a slurry dump site, Peabody wants to relocate the ditch once again. The Commissioners refused since they were originally told the ditch would be put back in its original location. The farmers are against the slurry lake and any changes to the ditch relocation. I'm not sure how the ditch location will affect Peabody's plans to build the flood levee if they can't move the drainage ditch.

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> I called Dan Gautier with the IDNR, Division of Water and asked if Peabody had received Construction in the Floodway permits. I asked how they could continue to receive such permits without mitigation for loss of farmland productivity on adjacent lands. Dan told me the IDNR, Division of Water had nothing to do with coal mine permits. The IDNR, Division of Mining and Reclamation has all permitting authority when it comes to coal mining. The farmer that called yesterday said that person was Kevin Geyer at Jasonville. The farmer said Mr. Geyer was okay with the new levee despite the fact it would have to have some impact on the neighboring lands. I am not aware of whether Peabody has completed a Hydrologic Engineering Center Study to show if the cumulative effect of all their floodplain levees are in violation of the law which is to not impact neighboring properties by more than one-tenth of a foot during flood events. The State required us to do a HEC study before they would rule on whether we needed a permit for the 3-foot high dike on the 61-acre moist soil unit in Dillins Bottoms. We didn't need a permit but it delayed our project a year and cost us \$19,000 for the Corps to do the Study.

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> I know there is going to be an effort put forth by the Izaak Walton League through Chuck Bauer to try and stop this action to destroy this body of water with coal slurry. They will undoubtedly be joined by HEC, Sierra Club and perhaps others. It appears to be a fight worth fighting based on what is at stake.

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> This project provides a unique opportunity to study what the impacts of Peabody Energy slurry disposal lakes on fish and wildlife. This is a unique opportunity to add to scientific knowledge and understanding of

unintended impacts to clean water, T& E species and migratory birds from the deposition of coal waste products. This should be a long term study since the impacts of runoff and slurry dissolution into lake waters will be permanent once the slurry is deposited and not covered by anything other than a thin layer of lake water subject to drought exposing the acid producing material. One question that should be addressed is the chemical composition of the waste products being deposited. We don't even know what the possibilities of contamination are.

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> We may not be able to stop this action but there is no reason we can't monitor this action and produce solid evidence of real impacts to the environment. It is a unique situation calling for FWS action due to the nexus with the Patoka River NWR & MA.

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> Here are some photos:

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> 0534- Slurry lake outfall from north side of C.R. 50N Ditch into Lost Creek now referred to as Mud Creek by locals. In the past, paddlefish have been observed feeding in Lost Creek from this bridge.

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> 0536 - Slurry lake outfall pipe on north side of C.R. 50N where it enter the road ditch before flowing into Lost Creek.

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> 0531 - 92-acre Flat Lake looking west from C.R. 650E. The site of the latest new nesting colony of the endangered interior least tern in Indiana located within the Patoka River NWR acquisition boundary.

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> 0541 - Gob Mountain located directly across from the refuge acquisition boundary on the south side of C.R. 50S just west of C. R. 850E. Runoff is collected in a ditch at the base of the fill, directed into a small pond, treated with sodium hydroxide, directed into a holding pond and eventually released into the road ditch leading to Keg Creek and then the Patoka River to the north along C.R. 850E.

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> Bill

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> --

> William McCoy, Refuge Manager

> Patoka River NWR&MA

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Caveats: NONE